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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,449	01/31/2001	Alan S. Geller	MSFT116244	8030
26389	7590	04/08/2005	EXAMINER	
CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347			CARLSON, JEFFREY D	
			ART UNIT	PAPER NUMBER
			3622	

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,449

Applicant(s)

GELLER ET AL.

Examiner

Jeffrey D. Carlson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11, 12, 15-22 and 25-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11, 12, 15-22 and 25-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the paper(s) filed 11/08/04.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-24 are rejected under 35 U.S.C. 101 because of the following reasons:

- Claims 19-24 do not set forth a concrete, useful and tangible result. These claims merely set forth preparatory steps for establishing an ad schedule/rotation. No ads are selected and therefore these claims fail to provide the required concrete, useful and tangible result. Merely estimating the number of opportunities and updating the estimate based on actual opportunities experienced falls short of providing a useful, concrete and tangible result.
- Claims 1-24 are not “within the technological arts.” The claims require a computer or computer-based steps in the *body of the claims* in order to satisfy this 101 requirement. See previous action for background on this rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 8, 11, 12, 15, 16, 25-29, 32-37, 40 are rejected under 35

U.S.C. 102(b) as being anticipated by Merriman et al (US5948061).

Regarding claims 1-3, 8, 11, 12, 15, 25-28, 32-36, 40 Merriman et al teaches selecting online advertisements to serve to users when a user/client browser requests an ad (ad opportunity). Ad campaigns are stored in the system and define target audiences, number of desired impressions and start/stop dates when the ads are to be run. The system chooses a particular ad to be served from among a plurality of qualifying ads. Merriman et al teaches a satisfaction index (SI) as [6:27-59]:

$$(\text{estimated total campaign views}) / (\text{total views desired})$$

Although Merriman et al does not state that his $(\text{actual views}) * (\text{campaign duration}) / (\text{elapsed time}) = (\text{estimated total campaign views})$, however, this is the case. If 5 views were had for day 1 of a 3 day campaign, one could expect $5 * 3 / 1 = 15$ views. This is the estimated number of opportunities (assuming steady/linear activity over the duration of the campaign) that applicant is claiming. Merriman et al's SI is used to assign priorities to (qualifying) ads and the ads are selected accordingly. The SI is taken to be dynamic in that Merriman et al updates the server when views are made – thus dynamically affecting the SI. Like applicant, the system provides a dynamic rotation of ads that tends to slow down ads that are being served to quickly. The steps of Merriman et al are carried out by programming executed by a computer

server. The functionality which stored the ad campaign data is taken to provide an ad manager. The functionality which schedules the ads is taken to provide the ad engine.

Regarding claims 16, 29, 37, the total estimated views is inherently equal to the number of views already seen plus the view estimated for the remaining time. In the example above, 15 views estimated for the campaign duration equals the 5 noted as viewed plus 10 predicted future views.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4-7, 17-22, 30, 31, 38, 39, 41-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merriman et al in view of Alberts (US5937392).

Regarding claims 4-5, Merriman et al does not provide details about how the system is initialized and at what initial rate the ads are served when the campaign first starts (with views = 0, SI = 0). Merriman et al does not teach the use of estimated impressions for *starting* an ad campaign scheduling frequency. Alberts also teaches a computer controlled ad campaign where the server chooses a particular ad frequency. Alberts teaches a system that can predictively model the number of hits (ad opportunities) to control the distribution of ads. Alberts uses recurring patterns, historical statistics and current statistics to provide control of ad distribution/impressions

[6:43-45, 66-67]. It would have been obvious to one of ordinary skill at the time of the invention to have used such historically-based predictions to initiate the system of Merriman et al so that the initial ad frequencies are given a balanced start (not too fast or too slow). Both Merriman et al and Alberts use current statistics to further dynamically change the distribution schedule. Merriman et al teaches the use of estimated ad opportunities left

Regarding claims 6, 7, 17-22, 30, 31, 38, 39, 41-48, Merriman et al essentially treats the system as a linear/regular activity (1 time period), whereby the views seen in time period 1 (day 1) are used to predict the remaining time periods, and assuming that activity between those time periods will remain the same. Alberts teaches that the ad campaign can be broken up into time periods (which add up to the total campaign duration), so that the granularity can capture and measure activity that changes over time periods. Each time period can then be treated with dynamic frequency scheduling so that an advertiser can control the intensity of advertising in various, smaller, time periods [6:44-56]. It would have been obvious to one of ordinary skill at the time of the invention to have treated the scheduling of Merriman et al in such a manner so as to provide more control over specific time periods. As stated above, it would have been obvious to one of ordinary skill at the time of the invention to have initially populated/relied upon estimates for scheduling and then used actual statistics to dynamically change the scheduling based on current statistics.

Response to Arguments

6. Applicant argues that that Merriman et al does not teach estimating opportunities. Examiner disagrees and points out above where $(\text{actual views}) * (\text{campaign duration}) / (\text{elapsed time}) = (\text{estimated total campaign views})$.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey D. Carlson whose telephone number is 703-308-

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3402. The examiner can normally be reached on Mon-Fri 8:30-6p, (off on alternate Fridays).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey D. Carlson
Primary Examiner
Art Unit 3622

jdc